



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 201204-0325]

RIN 0648-BK53

### Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2021-2022 Biennial Specifications and Management Measures; Inseason Adjustments

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; inseason adjustments to biennial groundfish management measures.

**SUMMARY:** This final rule announces routine inseason adjustments to the harvest limits for incidental Pacific halibut retention in the sablefish primary fishery. The Pacific Fishery Management Council recommended, and NMFS is implementing, a decrease to the incidental Pacific halibut catch limit to ensure equitable harvest opportunities without exceeding the harvest limit.

**DATES:** This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Abbie Moyer, phone: 206-305-9601 or e-mail: [abbie.moyer@noaa.gov](mailto:abbie.moyer@noaa.gov).

#### Electronic Access

This rule is accessible via the Internet at the Office of the Federal Register website at <https://www.federalregister.gov>. Background information and documents are

available at the Pacific Fishery Management Council's website at

<http://www.pcouncil.org/>.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The Pacific Coast Groundfish Fishery Management Plan (PCGFMP), and its implementing regulations at 50 CFR part 660, subparts C through G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. The Pacific Fishery Management Council (Council) develops groundfish harvest specifications and management measures for two-year periods (*i.e.*, a biennium). NMFS published the final rule to implement harvest specifications and management measures for the 2021-2022 biennium for most species managed under the PCGFMP on December 11, 2020, (85 FR 79880). NMFS also published a correction (85 FR 86853, December 31, 2020), and a correcting amendment (86 FR 14379, March 16, 2021) to implement the Council's recommendations for the 2021-2022 harvest specifications and management measures.

In general, the management measures set at the start of the biennial harvest specifications cycle help the various sectors of the fishery attain, but not exceed, the catch limits for each stock. The Council, in coordination with Pacific Coast Treaty Indian Tribes and the states of Washington, Oregon, and California, recommends adjustments to the management measures during the fishing year to achieve this goal. At its March 2-5 and 8-11, 2021, meeting, the Council recommended decreasing the amount of Pacific halibut that vessels in the sablefish primary fishery north of Point Chehalis, WA, may take incidentally to ensure that catch of Pacific halibut stays within the allocated amount.

Pacific halibut is generally a prohibited species for vessels fishing in Pacific coast groundfish fisheries, unless explicitly allowed in groundfish regulations. The Council developed a Catch Sharing Plan for the International Pacific Halibut Commission (IPHC)

Regulatory Area 2A, as provided for in the Northern Pacific Halibut Act of 1982 (16 U.S.C. 773-773k), to allocate the Area 2A annual total allowable catch (TAC) for Pacific halibut among fisheries off Washington, Oregon, and California.

Under the Catch Sharing Plan, the sablefish primary fishery north of Point Chehalis, WA (46°53.30' N. lat.) is allocated a portion of the Washington recreational allocation, which varies via a TAC-dependent formula, as described in the Catch Sharing Plan.

The sablefish primary fishery season is open from April 1 to October 31, though the fishery may close for individual participants prior to October 31 once they reach the cumulative limit associated with their tier assignment(s). Regulations at § 660.231(b)(3)(iv) allow vessels fishing in the sablefish primary fishery with a permit from the IPHC to retain Pacific halibut up to a set landing limit, which may be reviewed and modified throughout the sablefish primary fishery season to allow for attainment, but not exceedance of the Pacific halibut allocation. The objectives for the annual landing restrictions are to allow incidental Pacific halibut catch to attain the Pacific halibut allocation at about the same time the sablefish primary season ends (October 31), and to ensure an equitable sharing of the Pacific halibut landings among the fishers.

On March 9, 2021, NMFS implemented a 2021 Area 2A TAC of 1,510,000 pound (lb) (684.9 metric tons (mt)) (86 FR 13475). As specified by the Catch Sharing Plan, since the 2021 Area 2A catch limit is greater than 1.5 million pounds (680.4 mt), the incidental halibut limit for the sablefish primary fishery's allocation is 70,000 lb (31.8 mt) (86 FR 13475, March 9, 2021), the same limit as was in place in 2020. In 2020, due to the COVID-19 pandemic affecting vessel participation, harvest during the regular sablefish primary fishery season was lower than predicted. As a result, at the September 2020 Council meeting, the Council recommended, and NMFS implemented, an emergency rule to extend the sablefish primary season, normally scheduled to end on

October 31, until December 31, 2020 (85 FR 68001, October 27, 2020). Also, as part of that emergency rule, the incidental Pacific halibut retention allowance continued until the close of the Pacific halibut season on November 15, 2020. The 2020 season concluded with 90.5 percent of the 70,000 lb (31.8 mt) allowance for Pacific halibut landed. The effects of the COVID-19 pandemic on sablefish primary fishery harvest are expected to be lessened in 2021, compared to 2020. If fishing patterns return to more typical seasonal efforts in 2021, the incidental Pacific halibut retention limit in place in 2020 may be too high, and harvest of Pacific halibut may accrue too quickly to allow retention throughout the entire sablefish primary season, which is expected to run through October 31, 2021. Therefore, at the March 2021 virtual meeting, the Council recommended a precautionary reduction in Pacific halibut retention allowance early in the 2021 sablefish primary fishery season to discourage targeted fishing while allowing small incidental catches through the end of the season on October 31.

The Council recommended, and NMFS is revising the incidental Pacific halibut retention regulations at § 660.231(b)(3)(iv) to decrease the incidental Pacific halibut catch limit to enable some efficiency without exceeding the harvest limit. The limit will be reduced from 250 lb (113 kg) dressed weight of halibut for every 1,000 lb (454 kg) dressed weight of sablefish landed, and up to two halibut in excess of the ratio, to 225 lb (102 kg) dressed weight of halibut for every 1,000 lb (454 kg) dressed weight of sablefish landed, and up to two halibut in excess of the ratio. This decrease is expected to allow opportunity for total catch of Pacific halibut to approach, but not exceed, the 2021 allocation for the sablefish primary fishery north of Point Chehalis, WA (70,000 lb or 31.8 mt).

### **Classification**

This final rule makes routine inseason adjustments to groundfish fishery management measures, based on the best scientific information available, consistent with the PCGFMP and its implementing regulations.

This action is taken under the authority of 50 CFR 660.60(c) and is exempt from review under Executive Order 12866.

The aggregate data upon which these actions are based are available for public inspection by contacting Abbie Moyer in NMFS' West Coast Region (see **FOR FURTHER INFORMATION CONTACT**, above), or view at the NMFS West Coast Groundfish website:

*<http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish/index.html>.*

NMFS finds good cause to waive prior public notice and comment on the revisions to groundfish management measures under 5 U.S.C. 553(b) because notice and comment would be impracticable and contrary to the public interest. The adjustments to management measures in this document affect commercial fisheries off the coast of Washington. No aspect of this action is controversial, and changes of this nature were anticipated in the final rule for the 2021-2022 harvest specifications and management measures, which was published on December 11, 2020 (85 FR 79880). Accordingly, for the reasons stated below, NMFS finds good cause to waive prior notice and comment.

At its March 2021 meeting, the Council recommended the decrease to the incidental Pacific halibut retention limit for vessels fishing in the sablefish primary fishery north of Point Chehalis. The sablefish primary fishery opened on April 1. The Council recommends this precautionary reduction be implemented as soon as possible, early in the season, in an effort to prolong the amount of time Pacific halibut may be retained in the sablefish primary fishery north of Point Chehalis.

Additionally, if the new limit is not implemented until closer to the end of the season, after a full rulemaking, the sablefish primary fishery north of Point Chehalis

would be more likely to reach or exceed its 2021 allocation of Pacific halibut before the end of the sablefish primary fishery season. Therefore, providing a comment period for this action could limit the equitable benefits to the fishery, and the vessels that participate in the fishery, as they rely on the Pacific halibut retention allowance throughout the entire season and could result in a greater risk of exceeding the Pacific halibut harvest allocation.

Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable. Accordingly, no Regulatory Flexibility Analysis is required for this rule and none has been prepared.

For the same reasons stated above, NMFS has determined good cause exists to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d) so that this final rule may become effective upon publication in the **Federal Register**. The adjustments to management measures in this document affect commercial fisheries by decreasing the incidental halibut retention limit in the sablefish primary fishery north of Point Chehalis, WA. This adjustment was requested by the Council's advisory bodies, as well as members of industry during the Council's March 2021, meeting, and recommended unanimously by the Council. No aspect of this action is controversial, and changes of this nature were anticipated in the biennial harvest specifications and management measures established through a notice and comment rulemaking for 2021-2022 (85 FR 79880, December 11, 2020).

#### **List of Subjects in 50 CFR Part 660**

Fisheries, Fishing, and Indian Fisheries.

Dated: May 25, 2021.

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Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

**PART 660—FISHERIES OFF WEST COAST STATES**

1. The authority citation for part 660 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

2. In § 660.231, revise paragraph (b)(3)(iv) to read as follows:

**§ 660.231 Limited entry fixed gear sablefish primary fishery.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(iv) Incidental Pacific halibut retention north of Pt. Chehalis, WA (46°53.30' N lat.). From April 1 through October 31, vessels authorized to participate in the sablefish primary fishery, licensed by the International Pacific Halibut Commission for commercial fishing in Area 2A (waters off Washington, Oregon, California), and fishing with longline gear north of Pt. Chehalis, WA (46°53.30' N lat.) may possess and land up to 225 lbs (102 kg) dressed weight of Pacific halibut for every 1,000 lbs (454 kg) dressed weight of sablefish landed, and up to two additional Pacific halibut in excess of the 225-lbs-per-1,000-pound limit per landing. “Dressed” Pacific halibut in this area means halibut landed eviscerated with their heads on. Pacific halibut taken and retained in the sablefish primary fishery north of Pt. Chehalis may only be landed north of Pt. Chehalis and may not be possessed or landed south of Pt. Chehalis.

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